

Editor's note: Appeal filed sub nom. Plomis v. Hodel, Civ.No. 87-2893 (D.D.C. Oct. 26, 1987), transferred to W.D. Michigan, Civ. No. 88-242-CA, transferred back to D.C. (June 7, 1989), aff'd, Civ.No. 87-2893 NHJ (D.D.C. July 17, 1990)

BEARD OIL COMPANY (ON RECONSIDERATION)

IBLA 86-408, et al.

Decided July 27, 1987

Petition for reconsideration of Board's decision in Beard Oil Co., 97 IBLA 66 (1987), reversing decision of the Eastern States Office, Bureau of Land Management, holding noncompetitive oil and gas lease offers for acquired lands for rejection. ES-34652 (Mich.), et al.

Petition denied.

1. Oil and Gas Leases: Acquired Lands Leases -- Oil and Gas Leases: Applications: Filing -- Oil and Gas Leases: Description of Land -- Oil and Gas Leases: Noncompetitive Leases -- Oil and Gas Leases: Offers to Lease -- Regulations: Interpretation

From the record before the Board at the time of its prior decision, Beard Oil Co., 97 IBLA 66 (1987), it appeared that the practice of the Forest Service was to identify acquired lands in unsurveyed forests by use of "tract" numbers and that "line" or "case" numbers were used to identify lands in surveyed forests. Based on information filed on reconsideration, it appears that the Forest Service practice in fact varies from the above summary. Nevertheless, these variances do not change the Board's opinion regarding the inherent ambiguity in the term "acquisition number" found at 43 CFR 3111.2-2(c). That term does not necessarily include "line" or "case" numbers.

APPEARANCES: Jason R. Warran, Esq., Washington, D.C., for petitioner-intervenor Wilfred Plomis; John R. Brown, Vice President, Beard Oil Company, Oklahoma City, Oklahoma, for respondent.

OPINION BY CHIEF ADMINISTRATIVE JUDGE HORTON

On May 29, 1987, Wilfred Plomis, intervenor herein, filed a petition for reconsideration of the Board's decision in Beard Oil Co., 97 IBLA 66 (1987), in which we reversed four decisions of the Eastern States

Office, Bureau of Land Management (BLM), holding the acquired lands noncompetitive oil and gas lease offers of Beard Oil Company (Beard) for rejection. ^{1/} Beard and intervenor had filed conflicting lease offers for the same land, which is situated in Lake and Wexford Counties, Michigan, within the Manistee National Forest.

In its decisions, BLM specifically held Beard's lease offers for rejection because it had failed to describe the land sought by "acquisition number," as required by 43 CFR 3111.2-2(c). BLM concluded that the term "acquisition number" includes a "tract number, line number, acquisition number, case number or other identification number which is reasonably related to retrieving [from the surface management agency] the acquisition and title information for the applied for tract." In Beard Oil Co., supra at 70 n.7, we recognized that the requirement in 43 CFR 3111.2-2(c) to describe the land sought by "acquisition number" is mandatory. We also noted that the Forest Service uses "line" and "case" numbers in identifying tracts of acquired land in surveyed or "aliquot forests" such as the Manistee National Forest, but that Beard had failed to describe the land sought except by aliquot part. Nevertheless, we concluded that Beard could not be held to have violated the regulation where the term "acquisition number" does not unambiguously refer to "line" or "case" numbers. We stated that:

While it is possible * * * that an offeror could reasonably decide that "line" or "case" numbers are "acquisition numbers" within the meaning of the regulation, it is equally clear that an offeror could reasonably decide that "line" or "case" numbers are not "acquisition numbers" because of the admitted lack of clarity in the regulation.

Id. at 72. Therefore, because of the ambiguous nature of the requirement in 43 CFR 3111.2-2(c) to describe the land sought by "acquisition number," we reversed the BLM decisions.

Along with his petition for reconsideration, intervenor provides copies of a map and an associated tabular record page with respect to each of four national forests, namely, the Manistee National Forest (Michigan), the Monongahela National Forest (West Virginia), the Homochitto National Forest (Mississippi), and the Jefferson National Forest (Virginia). ^{2/} These four national forests are, according to intervenor, examples of an aliquot forest in Forest Service Region 9; a metes and bounds forest in Region 9;

^{1/} In decisions issued between Dec. 30, 1985, and Feb. 13, 1986, BLM held the following lease offers of Beard Oil for rejection: ES-34652 (Mich.), ES-34664 (Mich.), ES-34456 (Mich.), and ES-33913 (Mich.). Beard filed four appeals from the BLM decisions, which appeals were docketed as IBLA Nos. 86-408, 86-426, 86-427, and 86-860 and consolidated by Board order, dated Jan. 12, 1987.

^{2/} According to intervenor, the maps and tabular record pages are taken from Forest Service "status atlases" found in the public room of the Eastern States Office, BLM, and in Forest Service offices.

an aliquot forest in Region 8; and a metes and bounds forest in Region 8, respectively. Among other things, intervenor notes from the tabular record pages that, with the exception of the "aliquot" forest in Region 9, all of the national forests have a reference to "tract" numbers on their tabular record pages. Intervenor contends that:

As the Board's holding now stands, an offeror would be required, under the regulation, to refer to Forest Service numbers in offers for both aliquot and metes and bounds forests in Region 8, since those numbers have been designated by the Forest Service as "tract numbers." And since, in Region 9, the Forest Service has designated numbers for metes and bounds forests as "tract numbers," reference to those numbers would be required as well. Only offers for aliquot forests in Region 9 would be exempt from the regulatory requirement.

* * * * *

Thus for the Board's holding to remain in effect would mean that the applicability of the regulation would be determined not by the nature and purpose of the number in question but by the Forest Service Region in which the lands happen to occur. No reservations about the merits of the regulation can justify such an arbitrary result. [Emphasis in original.]

Intervenor also notes that the status atlas for each of these national forests contains a "line" number column. However, we note that the Status Map Tabular Record pages with respect to aliquot and metes and bounds forests in Region 8 contain no entries under the heading "Line No." In addition, intervenor submits that "case" numbers in aliquot forests of Region 9 are "analogous" to "tract" numbers in the other national forests. On the latter point, however, we note that the tabular record page with respect to the "metes and bounds" forest in Region 9 contains a "Case Name and Number" column, as well as a column designated "Tract." In addition, the tabular record pages with respect to "aliquot" and "metes and bounds" forests in Region 8 show columns for both "Line No." and "Tract No." This agrees with our conclusion in Beard Oil Co., supra at 72, that the Forest Service does not regard a line or case number as a "tract number."

[1] We acknowledge that the information provided by intervenor does shed additional light on the actual practice of the Forest Service with respect to its identification of tracts of acquired land. Indeed, from the record before the Board at the time of our April 28, 1987, decision it appeared that "the term 'tract number' [was] applicable to 'metes and bounds' forests, whereas the terms 'line' numbers and 'case' numbers [were] applicable to 'aliquot' forests." Beard Oil Co., supra at 72. This now appears not to be the case. Nevertheless, this does not change our opinion regarding the inherent ambiguity in the term "acquisition number" in 43 CFR 3111.2-2(c). That term does not necessarily include "line" or "case" numbers. Thus, we properly concluded in Beard Oil that the BLM decisions were incorrect where they presumed that Beard knew that the regulatory term

included such numbers, especially when BLM had never provided public notice to this effect and the Board had never so ruled.

The above holding is consistent with the principle expressed in Arthur E. Meinhart, 5 IBLA 345, 350 (1972), that "an applicant will not be held to have lost a statutory preference right for failure to comply with the requirement of a regulation unless that regulation is so clearly set out that there is no basis for his noncompliance."

Under 43 CFR 4.21(c), the Board has the authority to grant requests for reconsideration "in extraordinary circumstances where * * * sufficient reason appears therefor." After carefully reviewing intervenor's petition for reconsideration, we conclude that intervenor has not demonstrated such extra-ordinary circumstances as would warrant reconsideration.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, intervenor's petition for reconsideration of the Board's decision in Beard Oil Co., supra, is denied.

Wm. Philip Horton
Chief Administrative Judge

We concur:

Bruce R. Harris
Administrative Judge

Will A. Irwin
Administrative Judge

